

2:18-cr-055-APG-GWF - August 8, 2018

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF NEVADA

3
4 UNITED STATES OF AMERICA,)
5 Plaintiff,) Case No. 2:18-cr-055-APG-GWF
6 vs.) Las Vegas, Nevada
7 CEMONE CHAMPAGNE LEWIS,) Wednesday, August 8, 2018
8 Defendant.) Courtroom 6C, 9:33 a.m.
9) CHANGE OF PLEA HEARING
10) C E R T I F I E D C O P Y

11 REPORTER'S TRANSCRIPT OF PROCEEDINGS

12 BEFORE THE HONORABLE ANDREW P. GORDON,
13 UNITED STATES DISTRICT JUDGE

14
15 APPEARANCES:

16 For the Plaintiff:

17 UNITED STATES ATTORNEY'S OFFICE
18 BY: PHILLIP N. SMITH, JR., AUSA
19 501 Las Vegas Boulevard South, Suite 1100
Las Vegas, NV 89101
(702) 388-6336

20 (Appearances continued on Page 2)

21 COURT REPORTER:

22 Heather K. Newman, RPR, CRR, CCR #774
23 United States District Court
333 Las Vegas Boulevard South, Room 1334
Las Vegas, Nevada 89101
24 (702) 471-0002 or HN@nvd.uscourts.gov

25 Proceedings reported by machine shorthand, transcript produced
by computer-aided transcription.

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APPEARANCES CONTINUED:

For the Defendant:

FEDERAL PUBLIC DEFENDER'S OFFICE
BY: RAQUEL LAZO, AFPD
MARGARET W. LAMBROSE, AFPD
411 East Bonneville Avenue, Suite 250
Las Vegas, NV 89101
(702) 388-6577

Also present:

Kelly Bowen
United States Pretrial Services

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1 LAS VEGAS, NEVADA; WEDNESDAY, AUGUST 8, 2018; 9:33 A.M.

2 --oOo--

3 P R O C E E D I N G S

4 COURTROOM ADMINISTRATOR: All rise.

5 THE COURT: Thank you. Please be seated, everyone.

6 COURTROOM ADMINISTRATOR: United States vs.

7 Cemone Champagne Lewis, 2:18-cr-055-APG-GWF. This is the time
8 set for change of plea.

9 Counsel, please note your appearances.

10 MR. SMITH: Good morning, Your Honor. Phillip Smith
11 appearing on behalf of the United States.

12 THE COURT: Good morning.

13 MS. LAZO: Good morning, Judge. Raquel Lazo along
14 with Ms. Lambrose who -- we represent Mr. Lewis who is present
15 in custody.

16 Judge, we just wanted to let you know that my Notice
17 of Appearance has never been filed. I thought that I had.
18 I've been working on this case with Ms. Lambrose, so we're
19 filing it this morning if that's okay.

20 THE COURT: All right. I don't have a problem with
21 that.

22 Mr. Smith, do you have an issue with that?

23 MR. SMITH: No, sir.

24 THE COURT: I will allow Ms. Lazo to appear this
25 morning along with Ms. Lambrose.

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1 Good morning, Mr. Lewis.

2 THE DEFENDANT: Good morning, sir.

3 THE COURT: If you would just pull the microphone up a
4 little closer to you so we can hear you this morning.

5 THE DEFENDANT: Good morning, sir.

6 THE COURT: Good morning.

7 You've entered into a Plea Agreement with the
8 government pursuant to which you apparently wish to plead
9 guilty to one count in the Indictment charging you with being a
10 Felon in Possession of a Firearm.

11 Is that still your intent today?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: I'm not required to accept a guilty plea.
14 I usually do, but I have a hearing like this first. I want to
15 ask you some questions. Primarily I want to make sure that you
16 are entering this plea knowingly and voluntarily. That means
17 that you understand the consequences and ramifications and
18 potential penalties you face if you plead guilty to this
19 charge, and I want to make sure that you are not being forced
20 or coerced into entering this plea. I want to make sure you
21 understand all of your rights, including the rights you'll be
22 giving up if you do plead guilty.

23 I do this because once you enter a guilty plea, it's
24 really, really difficult to withdraw the guilty plea. So, I
25 don't want you to wake up tomorrow or next week and think,

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1 there were some questions I still had or I didn't quite
2 understand something. Today's the day to get all of your
3 questions answered, to make sure you have all the advice you
4 need from your lawyers and to ensure that you are making this
5 guilty plea knowingly and voluntarily.

6 It's not my job to talk you into pleading guilty or
7 talk you out of pleading guilty. I don't care either way.
8 It's entirely your decision to make based upon consulting with
9 counsel. So don't think I'm trying to steer you one way or
10 another with my questions. I'm just covering some issues. I
11 want to make sure that you've got all of your questions
12 answered and that I feel assured that you are doing this
13 knowingly and voluntarily.

14 THE DEFENDANT: Yes, sir.

15 THE COURT: At any time this morning if you don't
16 understand my question, just tell me and I'll try to repeat it
17 or to rephrase it.

18 At any time this morning if you want to speak with
19 your lawyers, just do so. You can move the microphone aside
20 and have a private conversation with Ms. Lambrose or Ms. Lazo,
21 again, to get all of your questions answered.

22 THE DEFENDANT: Yes, sir.

23 THE COURT: I may ask you the same or a similar
24 question more than once. It's not designed to trick you in any
25 way. I've just found over time that sometimes people, if they

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1 hear a question in a slightly different context, it may trigger
2 a different issue for you to think about. So don't think I'm
3 trying to talk down to you or trick you in any way if I ask you
4 the same question more than once. All right?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Understand everything so far?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Let me ask you to stand up and we'll have
9 you sworn in.

10 COURTROOM ADMINISTRATOR: Please raise your right
11 hand.

12 You do solemnly swear that the testimony you shall
13 give in the cause now before this Court shall be the truth, the
14 whole truth, and nothing but the truth, so help you God?

15 THE DEFENDANT: Yes.

16 THE COURT: Thank you. You may be seated.

17 Do you understand you just took an oath to tell the
18 truth?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: That oath means that if you answer any of
21 my questions untruthfully, that the government could bring
22 additional charges against you for perjury or for making a
23 false statement.

24 Do you understand that?

25 THE DEFENDANT: Yes, sir.

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1 THE COURT: How old are you, sir?

2 THE DEFENDANT: 28.

3 THE COURT: How far did you go in school?

4 THE DEFENDANT: My junior year. My junior year in
5 high school.

6 THE COURT: Okay. Do you have a GED yet?

7 THE DEFENDANT: No, sir.

8 THE COURT: Have you been employed in the last five to
9 eight years?

10 THE DEFENDANT: Yes. I do music.

11 THE COURT: Okay. Do you have any trouble
12 understanding spoken English?

13 THE DEFENDANT: Spoken who?

14 THE COURT: English.

15 Do you have any trouble. . .

16 (Attorney-client discussion.)

17 THE DEFENDANT: Oh. No, sir.

18 THE COURT: Let me ask. Do you have -- do you have
19 any trouble understanding the English language?

20 THE DEFENDANT: No, sir.

21 THE COURT: Do you have any trouble reading the
22 English language?

23 THE DEFENDANT: No, sir.

24 THE COURT: Have you been able to effectively
25 communicate with your lawyers while they've been representing

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1 you?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: In the last 24 hours have you had any
4 medicine, any drugs of any kind, or any pills of any kind?

5 THE DEFENDANT: No, sir.

6 THE COURT: Have you had any alcohol in the last
7 24 hours?

8 THE DEFENDANT: No, sir.

9 THE COURT: Have you been treated or diagnosed
10 recently with any mental illness or any addiction to narcotic
11 drugs or alcohol?

12 THE DEFENDANT: No, sir.

13 THE COURT: Does counsel for the government or the
14 defense have any doubt as to the defendant's competency to
15 enter a plea today?

16 MR. SMITH: No, Your Honor.

17 MS. LAZO: No, sir.

18 THE COURT: Based on counsel's representations and the
19 defendant's answers to my questions and my observations of his
20 demeanor here in court so far, I find he is competent to enter
21 a plea in this matter.

22 Mr. Lewis, have you had sufficient time to consult
23 with your lawyers in order to be fully prepared to enter a plea
24 today?

25 THE DEFENDANT: Yes, sir.

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1 THE COURT: Have your attorneys fully explained to you
2 the charge pending against you?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Have they fully explained to you the terms
5 of the Plea Agreement and the consequences of your proposed
6 guilty plea?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Have they been able to answer all the
9 questions you've had for them?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: And are you fully satisfied with your
12 lawyers' representation of you so far?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Have you been furnished with a copy of the
15 Indictment, that's the document that contains the charge
16 against you?

17 THE DEFENDANT: Yeah.

18 THE COURT: Did you read through that document?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Do you understand the charge in the
21 Indictment?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Did your attorneys explain the Indictment
24 to you?

25 THE DEFENDANT: Yes, sir.

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1 THE COURT: Ms. Lambrose or Ms. Lazo, does your client
2 waive reading of the Indictment here in court today?

3 MS. LAMBROSE: Yes, Your Honor, we do.

4 THE COURT: In the Indictment, you're charged with
5 being a Felon in Possession of a Firearm. That's a felony
6 offense.

7 The Indictment alleges, generally, that on or about
8 February 1st of this year you were found in possession of a
9 Ruger .38 caliber semiautomatic pistol and that you had been
10 previously convicted of crimes punishable by imprisonment for a
11 term exceeding 1 year.

12 Now, if the case went to trial, the government would
13 have to prove three elements in order to get you convicted on
14 that charge:

15 One, that you knowingly possessed a firearm; two, that
16 that firearm had been shipped or transported in interstate
17 commerce; and three, that at the time you possessed that weapon
18 you had previously been convicted of a felony, that is, a crime
19 charged -- or punishable by a term of imprisonment exceeding
20 1 year.

21 As I mentioned, if the case went to trial, the
22 government would have to prove each of those three essential
23 elements beyond a reasonable doubt before you could be
24 convicted.

25 Do you understand that?

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1 THE DEFENDANT: Yes, sir.

2 THE COURT: If you plead guilty, you'll be admitting
3 that each of those three essential elements is true as it
4 applies to you.

5 Do you understand that?

6 THE DEFENDANT: Yes. Yes, sir.

7 THE COURT: Ms. Lambrose, have you explained to your
8 client the essential elements of the offense?

9 MS. LAMBROSE: Yes, Your Honor.

10 THE COURT: And are you satisfied he fully understands
11 them?

12 MS. LAMBROSE: I am. Thank you.

13 THE COURT: And I don't mean to go back and forth.
14 I'm not sure who wants to respond to questions this morning.
15 I'll rely on you, Ms. Lambrose. Don't mean to cut you off,
16 Ms. Lazo.

17 MS. LAZO: Yeah. You can lead with Ms. Lambrose.
18 That's fine, Judge.

19 THE COURT: Okay. All right.

20 Let's talk about the Jury Trial rights that you have
21 that you'll be giving up if you plead guilty.

22 If you -- I'm sorry. You are entitled to enter a plea
23 of not guilty and to have a speedy and public Jury Trial here
24 in this courthouse.

25 Do you understand that?

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1 THE DEFENDANT: Yes, sir.

2 THE COURT: You have the right to the assistance of an
3 attorney, at the trial, and at all stages of the proceedings
4 against you.

5 Do you understand that?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: At trial, you would be presumed to be
8 innocent and before you could be convicted the government would
9 have to overcome that presumption of innocence and prove to the
10 jury that you're guilty beyond a reasonable doubt.

11 Do you understand that?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: We also have a requirement of a unanimous
14 jury verdict. That means that in order to be convicted, all of
15 the jurors would have to agree that you're guilty beyond a
16 reasonable doubt.

17 Do you understand that?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: At the trial, witnesses for the government
20 would have to come into court and testify here in your
21 presence. Your attorneys could cross-examine those witnesses
22 and could object to any evidence they found objectionable.

23 Do you understand that?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Similarly, your attorneys could call or

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1 subpoena witnesses to come to court and to testify in support
2 of your position. They could offer evidence in support of your
3 position, and you could testify if you chose to.

4 Do you understand that?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: The opposite of that is also true. You
7 have the right to remain silent. That means you have the right
8 to present no evidence, to present no witnesses, and to not
9 testify. If you exercised your right to remain silent, the
10 government could not use that against you in any way and could
11 not even comment upon that to the jury.

12 Do you understand all of that?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: If you went to trial and were convicted,
15 you could appeal that verdict to the Court of Appeals.

16 Do you understand that?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: And if you plead guilty to this charge,
19 you'll give up all of those Jury Trial and appellate rights
20 we've talked about so far, except you keep the right to the
21 assistance of counsel at all stages.

22 Do you understand all of that?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Let's talk about the penalties and
25 consequences you face if you plead guilty. And I'll preface

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1 this by saying I have no idea what sentence I will impose. I
2 need a lot more information before I can determine the
3 appropriate sentence. I need to hear from the government. I
4 need to hear from your lawyers. I'd want to hear from you if
5 you wanted to speak, and I also need to see the Pre-Sentence
6 Report from the Probation Office before I can really come up
7 with what I believe is to be the appropriate punishment. So I
8 don't know yet what punishment I would impose, but I want you
9 to at least understand the maximum penalties you're facing if
10 you plead guilty.

11 If you plead guilty, you could be sentenced to a
12 prison term of up to 10 years.

13 You understand that?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: A federal prison sentence cannot be
16 shortened by parole.

17 Are you aware of that?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: I don't know if you're facing any other
20 state or federal charges, but if you are, the punishment
21 imposed in this case could be made to run consecutive to or
22 concurrent with the sentence imposed in any other case.

23 Do you understand what that means?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: In addition, I can impose a fine upon you

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1 of up to \$250,000.

2 Are you aware of that?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: You also may be required to serve a term
5 of supervised release of up to 3 years. If supervised release
6 is imposed, there would be terms and conditions you'd have to
7 comply with. If you violate any of those terms and conditions,
8 your release could be revoked and you could be sent back to
9 prison, potentially for up to the full amount of time of
10 supervised release and potentially without any credit for time
11 served on supervised release.

12 Do you understand all of that?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: In addition, a special assessment of \$100
15 must be imposed at the time of sentencing.

16 Are you aware of that?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: I don't know if you are a United States
19 citizen, but in the event you're not a natural-born United
20 States citizen, you'll -- you may be deported upon completion
21 of any prison sentence and you may be denied citizenship and
22 re-entry into the country in the future.

23 Are you aware of all that?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Pursuant to the Plea Agreement, I will

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1 require you to provide accurate and complete financial
2 information to the government, and you may be required to
3 surrender assets that you have obtained, either directly or
4 indirectly, as a result of the offense that you're pleading
5 guilty to.

6 Do you understand all that?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Do you have a copy of the Plea Agreement
9 there with you there at your table?

10 THE DEFENDANT: Yes.

11 THE COURT: Did you sign that on Page 10?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Before you signed that, did you have an
14 opportunity to read it and fully discuss it with your
15 attorneys?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: And did your attorneys fully explain the
18 Plea Agreement to you?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: I'm going to ask you to listen very
21 carefully. I'm going to have Mr. Smith give us a brief summary
22 of the government's understanding of the Plea Agreement. I
23 want to make sure everybody's on the same page and there's no
24 confusion about the terms of the Plea Agreement. So if he says
25 something you don't think's part of your deal, today's the day

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1 to speak up. All right?

2 Mr. Smith, if you would, please.

3 MR. SMITH: Yes, Your Honor.

4 Your Honor, the defendant's going to plead guilty to
5 the sole count in the Indictment charging him with one count of
6 Felon in Possession of a Firearm. In exchange for that guilty
7 plea, the government agrees to not bring any additional charges
8 against the defendant arising out of the investigation in the
9 District of Nevada that culminated in this Plea Agreement and
10 based on conduct known to the United States, except the United
11 States reserves the right to prosecute the defendant for any
12 crime of violence as defined by 18 U.S.C. Section 16.

13 THE COURT: Let me ask one question before you go past
14 Page 3.

15 MR. SMITH: Yes, sir.

16 THE COURT: Page 3, Line 21, I think there's a time
17 missing. It says on February 1 at approximately. . . and
18 there's no time enclosed in there.

19 MR. SMITH: Oh, you're correct, Judge.

20 THE COURT: Do you want to just strike out
21 "approximately"?

22 MR. SMITH: Yes. Yes, sir.

23 THE COURT: The time's not relevant in this, is it?

24 MR. SMITH: It's not, Judge.

25 THE COURT: All right. Any objection to that by the

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1 defense?

2 MS. LAMBROSE: No, Your Honor.

3 THE COURT: All right. So we're going to strike "at
4 approximately" that way it will read a little cleaner.

5 All right.

6 MR. SMITH: Thank you, Your Honor.

7 Judge, the defendant understands that he will be
8 subject to a term of supervised release of up to 3 years.

9 At sentencing, the parties will jointly recommend that
10 the Court sentence the defendant to a sentence of time served
11 unless the defendant commits any act that could result in the
12 loss of a downward adjustment for acceptance of responsibility.

13 After the defendant's entry of plea, the government
14 will not oppose the defendant's motion for release pending
15 sentencing but retains the right to argue the conditions of any
16 such release if the Court grants it. The defendant
17 acknowledges that the Court does not have to follow the
18 parties' recommendations.

19 At sentencing, the parties retain the right to argue
20 as to the length of any term of supervised release, and the
21 defendant may request a sentence below the guidelines range as
22 calculated by the Court and may seek a downward adjustment from
23 any sentence that the Court may impose.

24 Judge, finally, there is an appellate waiver wherein
25 the defendant waives all of his appellate rights with the

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1 exception of non-waivable claims of ineffective assistance of
2 counsel or the right to appeal any portion of the sentence that
3 is an upward departure or an upward variance from the
4 sentencing guidelines range determined by the Court.

5 THE COURT: All right. Thank you, Mr. Smith.

6 MR. SMITH: Yes, Your Honor.

7 THE COURT: Ms. Lambrose, has Mr. Smith correctly
8 summarized the terms of the Plea Agreement as you understand
9 it?

10 MS. LAMBROSE: He has. Thank you, Your Honor.

11 THE COURT: Thank you.

12 Mr. Lewis, did Mr. Smith correctly summarize the terms
13 of the Plea Agreement as you understand it?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Did he say anything that you did not think
16 was part of your deal?

17 THE DEFENDANT: No, sir.

18 THE COURT: Did he leave anything out you want to ask
19 him about to make sure it is part of your deal?

20 THE DEFENDANT: No, sir.

21 THE COURT: The terms of the Plea Agreement are not
22 binding on me, so I don't have to accept them or follow them.
23 If I don't follow the recommendations of the Plea Agreement,
24 that does not give you the right to withdraw your guilty plea.

25 Do you understand that?

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1 THE DEFENDANT: Yes, sir.

2 THE COURT: As Mr. Smith mentioned, your Plea
3 Agreement contains a waiver of most of your rights of appeal.
4 I want to make sure you understand that.

5 You are waiving the right to appeal any sentence I
6 impose upon you so long as it's within or below the guideline
7 range I determine; you're waiving the right to appeal the
8 manner in which I determine your sentence; and you're waiving
9 the right to appeal any other aspect of your conviction or
10 sentence.

11 Do you understand all that?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Are you knowingly and voluntarily waiving
14 those rights of appeal?

15 THE DEFENDANT: Um-hmm.

16 THE COURT: In a sense, your only right of appeal will
17 be if I sentence you to a term in prison longer than the high
18 end of the guideline range I determine and then you could
19 appeal that portion that exceeds the high end of the guideline
20 range.

21 Do you understand what all that means?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: All right. And you're voluntarily and
24 knowingly waiving all of those rights of appeal; is that right?

25 THE DEFENDANT: Yes, sir.

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1 THE COURT: All right. In addition, your
2 Plea Agreement contains a waiver of what we call collateral
3 challenges, and those are other ways to attack your conviction
4 or sentence. You're waiving all of your collateral challenge
5 rights, except you keep the right to challenge based upon the
6 ineffective assistance of counsel. That's a right you can
7 never waive; you always keep that.

8 Do you understand all of that?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Do you have any question about the meaning
11 of anything contained in the Plea Agreement?

12 THE DEFENDANT: No, sir.

13 THE COURT: So you fully understand the terms of the
14 Plea Agreement; is that right?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Has anybody made any promise to you, other
17 than what's contained in the Plea Agreement?

18 THE DEFENDANT: No, sir.

19 THE COURT: So the Plea Agreement contains the entire
20 understanding you have with the government regarding the charge
21 against you; is that right?

22 THE DEFENDANT: Besides, um . . . the state stuff?

23 MS. LAZO: Yeah.

24 THE COURT: You ought to consult with your attorney
25 before you say something on the record.

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1 MS. LAZO: So, Judge, he's just pausing because there
2 is an agreement where the government is going to assist us in
3 getting the D.A. to resolve the related state case that's
4 pending before them. It's the same exact gun here.

5 MR. SMITH: It's actually a different case.

6 MS. LAZO: That's the one that's a different one?

7 MR. SMITH: Yeah. It's where he's in the Maserati.

8 MS. LAZO: Right, but -- but -- which -- the one that
9 we're going to dismiss -- you're going to help us dismiss is
10 this case?

11 THE COURT: My understanding from reading the --
12 the --

13 MS. LAZO: I just want to make sure, because I know he
14 has two, but. . .

15 MR. SMITH: This case has to be dismissed once he --

16 MS. LAZO: Correct, but it's the other one that you're
17 going to dismiss?

18 MR. SMITH: There's an additional case.

19 MS. LAZO: Okay. So there's two.

20 THE COURT: Yeah. My understanding from Pretrial
21 Services report is there was an arrest on February 1 by Metro.

22 MS. LAZO: That's this one.

23 MR. SMITH: That's this one.

24 THE COURT: And then there's also one on February 10.

25 MS. LAZO: Correct.

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1 THE COURT: Own or possess guns. So you're talking
2 about the second one?

3 MR. SMITH: The February 10th is a separate case,
4 Judge.

5 MS. LAZO: So, there's two separate gun cases. The
6 February 1st one is obviously this case, and there is an
7 agreement where the government is going to assist us in getting
8 those dismissed. Correct?

9 MR. SMITH: Yes.

10 THE COURT: Is that correct, Mr. Smith?

11 MR. SMITH: Yes, Judge, it is.

12 THE COURT: Okay. All right. Thanks for the
13 clarification.

14 With that clarification, then, does that clarification
15 and the Plea Agreement, that's the entire understanding you
16 have with the government regarding the charge against you; is
17 that right?

18 THE DEFENDANT: Um. . .

19 (Attorney-client discussion.)

20 MS. LAZO: Right. So, Judge, there's also, which is
21 in the Plea Agreement, which the government already did state
22 that he's not going to oppose our request for his release after
23 entry of plea.

24 THE COURT: Yeah.

25 MS. LAZO: But Mr. Phil -- Mr. Smith did state that,

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1 so he just wanted to make sure that --

2 THE COURT: Yeah.

3 MS. LAZO: -- that was part of it.

4 THE COURT: Mr. Smith stated that part of the
5 Plea Agreement is that they would not oppose your request to be
6 released from custody today pending sentencing.

7 (Attorney-client discussion.)

8 THE COURT: Okay. So let me ask you --

9 MS. LAZO: Yeah. Thank you.

10 THE COURT: -- do you have any other agreements with
11 the government?

12 THE DEFENDANT: No.

13 THE COURT: So it's the Plea Agreement, which includes
14 the government not opposing your request for immediate release
15 today, and it includes some agreement with the government that
16 they will try to assist in resolving the state court gun
17 charge.

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Anything else?

20 THE DEFENDANT: No, sir.

21 THE COURT: All right. Did you knowingly and
22 voluntarily make that entire agreement with the government?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: And that represents the entire
25 understanding you have with the government about the charge

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1 against you; right?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: All right. Mr. Smith, has the government
4 made any other plea offers that are more favorable to
5 Mr. Lewis?

6 MR. SMITH: No, Your Honor.

7 THE COURT: Do you agree with that?

8 MS. LAMBROSE: I do, Your Honor.

9 THE COURT: Thank you.

10 Mr. Lewis, has anybody threatened you in order to get
11 you to plead guilty?

12 THE DEFENDANT: No, sir.

13 THE COURT: Is anyone forcing you in any way to plead
14 guilty?

15 THE DEFENDANT: No, sir.

16 THE COURT: Has anyone said if you don't plead guilty
17 that additional charges may be brought against you or some other
18 adverse action may be taken against you?

19 THE DEFENDANT: No, sir.

20 THE COURT: Has anybody made any promise to you as to
21 what sentence I will impose?

22 THE DEFENDANT: No, sir.

23 THE COURT: Has the government -- I'm sorry. Has your
24 attorney explained to you about the sentencing guidelines and
25 how she believes they may apply to your sentence?

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1 THE DEFENDANT: Yes, sir.

2 THE COURT: In determining the appropriate punishment,
3 I'm required to consult the sentencing guidelines and to
4 calculate the applicable guideline range.

5 Do you understand that?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: After considering that range, I'm also
8 required to consider any variances or departures, upwards or
9 downwards from that range.

10 Do you understand what that means?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: In determining the appropriate punishment,
13 I can consider any relevant conduct you've engaged in,
14 including any prior criminal history you have.

15 Do you understand that?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: The guidelines are only advisory. I don't
18 have to follow them. I have to consult them, but I'm not
19 required to follow them.

20 Do you understand that?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: And so while you and your attorneys may
23 have in mind some particular sentence or range, I may decide
24 that a different punishment is more appropriate.

25 Do you understand that could happen?

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1 THE DEFENDANT: Yes, sir.

2 THE COURT: If that happens and I sentence you to
3 something you're not expecting, that would not give you the
4 right to withdraw your guilty plea.

5 Do you understand that?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: And, again, I have no idea at this point
8 what sentence I will impose, but in the event I impose the
9 maximum sentence of 10 years and the maximum fine and the
10 maximum supervised release, that would not give you the right
11 to withdraw your guilty plea.

12 Do you understand all that?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Do you understand all of the possible
15 punishment consequences of your plea of guilty?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: In order to accept your plea, I need a
18 sufficient factual basis for that. In your Plea Agreement,
19 starting on Page 3, Line 19, and carrying over to Page 4,
20 Line 6, you admit to some specific facts. Did you read those
21 facts carefully before you signed this Plea Agreement?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: I want to go through these with you and
24 make sure these are true, and again, I'll remind you that you
25 are under oath.

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1 On February 1st of 2018 were you involved in a traffic
2 stop in a car you were driving at 125 East Harmon Avenue?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: And during that stop were you asked to
5 step out of the vehicle?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: During the investigation that went along
8 with that traffic stop did the police recover a Ruger .38
9 caliber semiautomatic pistol?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: And that pistol bore serial number
12 380-108493.

13 Is that true?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: And that was on your person?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: So you were in possession of that firearm;
18 correct?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: And at the time you were in possession of
21 that firearm you had previously been convicted of a crime
22 punishable by a term of imprisonment exceeding 1 year; is that
23 right?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: And you agree that that firearm had been

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1 shipped and transported in interstate commerce?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: And did all this occur in the State and
4 Federal District of Nevada?

5 THE DEFENDANT: Uh. . . this case. Not the old case.

6 THE COURT: Well, this -- the facts that I just asked
7 you about --

8 THE DEFENDANT: Yes, sir.

9 THE COURT: -- those facts occurred here in the State
10 and Federal District of Nevada; right?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Here in Clark County, Nevada?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: All right. Mr. Smith, is the government
15 satisfied with the factual basis for the plea?

16 MR. SMITH: Yes, Your Honor, I am. Thank you.

17 THE COURT: All right. Mr. Lewis, I've got one last
18 question for you before I call for your plea.

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Do you have any remaining questions,
21 concerns, issues, or anything you want to speak with your
22 lawyers about? Take all the time you need. Next I'll call for
23 your plea, but if there's anything else you want to talk to
24 your lawyers about, take all the time you need and chat with
25 them.

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1 (Attorney-client discussion.)

2 MS. LAZO: Judge, he does not have any other
3 questions.

4 THE COURT: All right. Mr. Lewis, you've got all of
5 your questions answered?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: You understand all the consequences of
8 your plea?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Is it still your intent to plead guilty to
11 this charge?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Then with regard to Count One of the
14 Indictment charging you with being a Felon in Possession of a
15 Firearm, how do you plead?

16 THE DEFENDANT: Guilty.

17 THE COURT: Are you pleading guilty because in truth
18 and in fact you are guilty and for no other reason?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: I find the defendant is fully competent
21 and capable of entering an informed plea; that he is aware of
22 the nature of the charge and the consequences of his guilty
23 plea; and that his plea of guilty is a knowing and voluntary
24 plea supported by an independent factual basis containing each
25 one of the essential elements of the offense. Mr. Lewis' plea

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1 is therefore accepted, and he is now adjudged guilty of that
2 offense.

3 I'll now order that a Pre-Sentence Investigation
4 Report be prepared by the Probation Office. Once that's been
5 completed, you and your attorneys will have a chance to read
6 it. Read it very carefully. If you see any factual errors in
7 that report, point those out to your lawyers so they can be
8 corrected.

9 THE DEFENDANT: Yes, sir.

10 THE COURT: It's important that that report be
11 accurate because I'm going to rely upon it in determining the
12 appropriate punishment and the Bureau of Prisons may rely upon
13 it for programs or placements you may be eligible for in the
14 event you're incarcerated.

15 At the time of sentencing, your attorneys can speak on
16 your behalf. You, too, can speak at sentencing if you'd like.
17 You're not required to, but just think about it between now and
18 then if there's anything you'd like to say at sentencing.

19 Ms. Johansen, may I have a date and time for
20 sentencing, please?

21 COURTROOM ADMINISTRATOR: November 15th at 10:30.

22 THE COURT: November 15 at 10:30.

23 All right. Is the government seeking detention or
24 release conditions for this defendant?

25 MR. SMITH: So, Judge, according to the

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1 Plea Agreement, the defendant's going to move to be released
2 and I'm simply going to not oppose, i.e., remain silent and
3 just leave it to the Court's discretion.

4 THE COURT: All right.

5 MS. LAZO: Judge, we're asking for you to consider his
6 release. I know that this is typically -- this is somewhat
7 abnormal right at this part where, you know, you have the
8 defendant pleading guilty and technically the standard is
9 supposed to be harder to meet, but this is a case unique in the
10 terms of the Plea Agreement as we've just reviewed. Each side
11 is giving up something and Mr. Lewis is giving up his Motion to
12 Suppress. He had a Motion to Suppress. He really believed in
13 his motion, but to conserve and -- you know, resources, the
14 government has made a decision to extend an offer and Mr. Lewis
15 is accepting that offer and we're going to ask you to give him
16 the full benefit of his Plea Agreement, which includes the
17 release -- that we can make the pitch for release.

18 I recognize, Judge, that my client does have criminal
19 history from a young age. 18, 19, 20, he was picking up
20 felonies in Chicago. And it seems that I would note when
21 you're looking at the Pretrial report, Judge, in 2011, when he
22 got released from his prison sentence, Page 4, he did some time
23 there for an aggravated assault. Notably, Judge, if you look
24 from 2011 to present, he really hasn't gotten into any
25 significant trouble. There's been contacts with law

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1 enforcement. We can't deny that. But a lot of those cases,
2 Judge, if you look on Page 5, really, you only have a
3 misdemeanor conviction. Everything else, there's no
4 disposition.

5 THE COURT: Well, there's a domestic battery that a
6 Protection Order issued on.

7 MS. LAZO: I'm sorry, Judge, you're right. There is
8 that, as well -- as well --

9 THE COURT: Unlawful possession of a weapon. There's
10 an aggravated battery with the discharge of a firearm.

11 MS. LAZO: Well, so, with a lot of those, though, they
12 didn't charge him. So, you look at the unlawful possession of
13 a weapon, they didn't charge him. It doesn't seem that the
14 aggravated battery -- so there's a lot of contacts, but no
15 resolution, no disposition that we can tell of.

16 I guess what I'm saying, Judge, is I think he has
17 attempted -- from his release, he had, I think, attempted at
18 rehabilitation. I think that that is clear. There are no
19 felony convictions. He tried to leave Chicago. Things were
20 not good there in Chicago. He came over here. His contact
21 here -- you know, he hasn't started off on the best foot here,
22 but I think he is attempting. Just removing and recognizing
23 that your circumstances around you are not the best is
24 positive.

25 The biggest change, though, Judge, is the birth of his

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1 child. His girlfriend is present in court along with the baby.
2 She's willing to be a third-party custodian to make sure that
3 he's going to appear for his future court dates and stay out of
4 trouble.

5 THE COURT: Tell me what you think that means, her
6 being a third-party custodian.

7 MS. LAZO: I -- what I think that means, Judge, is
8 that she's responsible to make sure that he abides by any
9 condition this Court sets.

10 THE COURT: So if he flees, I get to put her in
11 custody?

12 MS. LAZO: Technically, yes, that's what she signs up
13 for. She could be held in contempt for not following this
14 Court's order because she is signing up to say, yes, I'm
15 responsible for him.

16 THE COURT: Okay.

17 MS. LAZO: So, that's a big responsibility, Judge.
18 It's not to be taken lightly.

19 THE COURT: If that's the consequences, I agree.

20 MS. LAZO: So, you know, the Plea Agreement
21 contemplates a sentence of credit for time served. That's
22 another big factor, Judge. He is going to be put on supervised
23 release. And, so, why not give him the opportunity now to
24 start rehabilitating and be subject to whatever conditions this
25 Court sets forth?

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1 As I said, it's a very unique plea, but the parties
2 have given up something and I'm just asking that you give him
3 the full benefit of his Plea Agreement because that's part of
4 the deal. I know that you don't have to follow it. He knows
5 that. He recognizes this, Judge. I ask that you put him under
6 whatever conditions you see fit.

7 There is a big deterrence here, too, Judge, because if
8 he messes up, not only does he go back into custody, but guess
9 what, the Plea Agreement is void. So he has a lot to lose by
10 not complying with this Court's order and I think that's the
11 biggest thing that this Court can be confident in that, you
12 know, he knows that he can be facing jail time where he's no
13 longer facing jail time, assuming this Court were to follow it,
14 but as you started off at the beginning of this hearing, you
15 tend to follow the Plea Agreements.

16 So, Judge, unless you have any questions for me, I
17 don't have anything to add. I want to make sure that I covered
18 everything with Ms. Lambrose.

19 THE COURT: Um-hmm.

20 (Counsel conferring.)

21 MS. LAZO: Unless you have any questions of me, Judge,
22 I would submit it on that.

23 As I said, his girlfriend is here if you have any
24 questions for her. The only thing I guess I forgot to leave
25 out [sic] is although he doesn't -- hasn't lived in Las Vegas

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1 very long, he did have a community in Chicago, but he does have
2 a place here. He resides with her. The baby is here. So, he
3 does have ties here.

4 As far as employment, Judge, his employment, he's a
5 musician. So, it might not be as stable as Pretrial wants it,
6 but he's willing to work with Pretrial to do whatever he needs
7 to do to show that that is a legitimate employment and
8 hopefully he can bring in the income that he needs for his
9 family.

10 THE COURT: Thank you.

11 MS. LAZO: Thank you, Judge.

12 THE COURT: Mr. Smith, I know the Plea Agreement says
13 you're not going to oppose. Do you have anything to add?

14 MR. SMITH: Well, Judge, the Plea Agreement also says
15 that the government reserves the right to request any
16 conditions.

17 THE COURT: Absolutely.

18 MR. SMITH: So, what I will do to save us time is if
19 you are inclined to release the defendant, the conditions that
20 I would ask the Court to consider are the following:

21 Number 1. I'd ask that you order that he not have any
22 contact with any felons, similar to what is expected of one on
23 supervised release. My concern about that is, is that this
24 pending state case involves Mr. Lewis allegedly being in the
25 company of other felons, a bunch of guns being found in the

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1 car, which obviously is a mixture -- or a recipe for disaster.
2 So I'd ask that you, you know, order him that, you know, if
3 he's going to try and rehabilitate himself, then he needs to
4 choose his friends wisely.

5 Additionally, I know that that may kind of put
6 somewhat of a crimp in his style with regards to his music
7 career because it's my understanding that some of the
8 additional musicians that he is associating himself with are
9 also felons. Acknowledging that that may cause some problem
10 with his employment, I still think that it is a necessary
11 condition if you are going to release him.

12 The only other thing I would say, Judge, is, just
13 briefly, to respond to Ms. Lazo's assertion to the Court that
14 if Mr. Lewis does not abide by any conditions of release that
15 you impose upon him that the Plea Agreement will be void, I
16 just want to clarify, the Plea Agreement wouldn't be void.
17 What would happen is the government would then not be required
18 to recommend a time-served sentence, but he would still be
19 bound by the Plea Agreement.

20 THE COURT: You agree with that, Ms. Lazo?

21 MS. LAZO: That's what I meant, Judge, that --

22 THE COURT: Okay.

23 MS. LAZO: -- the terms are not, you know, in that
24 sense, but yes, his guilty plea stands but the government
25 doesn't have to ask for time served.

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1 THE COURT: All right. Mr. Smith, I'm going to ask
2 you, and I meant to ask you earlier, but it's sort of related
3 to release but it's mostly related to the recommendation of
4 punishment of time served, which does get into my calculation
5 of supervised release conditions. Ms. Lazo says it's based
6 upon a potential suppression motion. Tell me what the -- why
7 is the government -- I mean, it sounds like he's been in
8 custody for only a few months. Typically, I know the
9 government requests a greater deal of custodial sentence on
10 felons in possession of a firearm so I'm just curious why we're
11 here where we are now.

12 MR. SMITH: Judge, we're here where we are now
13 because, you know, candidly, sometimes -- you know, I'm only
14 one person and I kind of have to pick my battles and this is a
15 case where, in weighing the amount of resources that I would
16 have had to invest in fighting the suppression motion -- and
17 again, Judge, I'm not conceding that it would have been
18 successful.

19 THE COURT: Of course.

20 MR. SMITH: If Ms. Lazo and Ms. Lambrose are candid,
21 they'll tell you that I have been saying, look, I think I can
22 win this thing, but, you know, I appreciate that sometimes you
23 have to pick your battles and so this was one that I thought
24 under the circumstances that this Plea Agreement and the
25 recommendation was not entirely unreasonable because also to be

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1 candid, Judge, you know, I'm honest- -- if you follow the
2 Plea Agreement, I'm going to ask for 3 years of supervised
3 release and if Mr. Lewis hasn't learned his lesson, then, for
4 lack of a better term, the government will get another crack at
5 him. That's kind of how I look at it.

6 THE COURT: And -- and -- and believe me, I'm not
7 criticizing at all the agreement that was entered. I'm just
8 trying to get an understanding of the factors that led up to
9 that and I completely acknowledge and appreciate what you're
10 saying. Obviously, there are limited resources and you do have
11 to pick your battles --

12 MR. SMITH: Yes, sir.

13 THE COURT: -- and it makes sense.

14 MR. SMITH: I had just finished a trial. I have
15 another one set on August 20th. I have a third one set on
16 August 20th, so it was just kind of. . . let's see what we can
17 do in terms of resources.

18 THE COURT: And I -- and I completely appreciate and
19 agree with that, so, just kind of helps me understand that.

20 MR. SMITH: Yes, sir.

21 THE COURT: Thank you.

22 Officer Bowen, I'd love to hear from you. I know
23 you've submitted a report saying you recommend custody.

24 PRETRIAL OFFICER: Yes, Your Honor. We stand on our
25 original report and our original recommendation, which also

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1 included verified information from the defendant's girlfriend,
2 which I did reach out and re-verify that that information is,
3 in fact, still true, but we would stand on our original
4 recommendation.

5 THE COURT: All right. Thank you.

6 MS. LAZO: Judge, and I also wanted to thank Pretrial
7 because they threw this together pretty quickly and we didn't
8 get the accurate information to her until basically last night
9 and she contacted the girlfriend this morning.

10 THE COURT: And I just got a report this morning from
11 Officer Bowen confirming that, so I appreciate the extra work
12 that was put into this in that regard.

13 MS. LAZO: Judge, and the other thing, just so you
14 know, is that if you were to release him, he does have those
15 warrants, so he's not going to immediately kick out to the
16 street. Everybody is fully aware of that. Because those
17 pending cases are ultimately to be dismissed, we are in contact
18 with his state D.A. and public defender on those cases. There
19 is one that we don't have assistance on, but that's the affray
20 and the -- the affray one that's from February 9th.

21 THE COURT: Um-hmm.

22 MS. LAZO: I anticipate that that will be a quick
23 resolve given that he's been in custody over here. My -- my
24 guess is that they'll just give him credit for time served. So
25 he recognizes that he's got to take care of those, and there's

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1 potentially two traffic warrants. I didn't show those. I just
2 am seeing them here on Pretrial, but those would be quick
3 resolutions on both of those I would anticipate.

4 THE COURT: Mr. Lewis, looking at your prior record
5 gives me a lot of concern. Some of these arrests, the age of
6 10, 15, 16, 18, 19, 20 I can. . . while not certainly condone,
7 I can understand. You're young, you've got bad influence on
8 your life and kids don't make good decisions. I get that.

9 THE DEFENDANT: Yes, sir.

10 THE COURT: But as you get older and you're in your
11 mid-twenties and still incurring a lot of arrests, I am really
12 troubled. Domestic battery. Unlawful possession of a weapon.
13 Aggravated battery and discharge of a firearm. Now, while
14 those weren't prosecuted, apparently, the fact is, you know,
15 where there's smoke there's fire and you're either causing
16 problems yourself or you're around people causing problems and
17 that's not a good recipe.

18 THE DEFENDANT: Yes, sir.

19 THE COURT: I'm concerned that in 2013 you've got a
20 non-appearance, which tells me you're not respecting the court
21 because the court ordered you to be somewhere. When you're 19
22 you've got probation violations, on Page 4. From 2009, an
23 unsatisfactory probation termination. Couple times -- well, I
24 guess that was the same -- well, I don't know if that's the
25 same one or not, but you've got two of them on Page 4 of the

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1 report. Apparently, at the time of your arrest in 2010, you
2 might have assaulted the police officer. You fled in this
3 case. It's just a bad record and that gives me real concern.
4 I balance that against the fact that there's a recommendation
5 for time served; that I can release you with conditions; that
6 as Ms. Lazo points out, your release time between now and
7 sentencing I will take into account and if you violate those
8 conditions, I am most likely going to incarcerate you
9 immediately and keep you there pending sentencing and may not
10 sentence you to time served at that point. So you need to be
11 on your best behavior.

12 And, as Mr. Smith points out, if I follow -- even if I
13 follow the government and the parties' recommendation of time
14 served, you're going to do some supervised release in which
15 case you're going to have to behave.

16 I'm going to probably give you this same lecture when
17 I sentence you to supervised release but I'm going to tell you
18 right now, you may be at a crossroads. You're in your
19 mid-twenties, late twenties now. It's time to kind of put that
20 nonsense behind you. You've got a new baby. You've got people
21 that depend upon you. Now's the time to start demonstrating
22 that to me, to our Pretrial Services officer, to our probation
23 officer, to Mr. Smith, to your attorneys, to everybody, that
24 you can do this.

25 THE DEFENDANT: Yes, sir.

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1 THE COURT: You probably need a new set of friends,
2 without casting aspersions on your friends, but if they're
3 getting you in trouble, get a new influence.

4 I hope the music business pans out for you, but you
5 need to also probably get another job to support yourself while
6 you're pursuing the music career. I know a lot of people that
7 go into acting and they wait tables while they're waiting for
8 their big break acting. Probably the same thing for musicians.
9 You know, at some point I hope it breaks for you and you make a
10 boatload of money.

11 THE DEFENDANT: Yeah.

12 THE COURT: But in the meantime, you need some steady
13 income to support yourself.

14 THE DEFENDANT: Yes, sir.

15 THE COURT: So you need to demonstrate to me some
16 efforts to get a job --

17 THE DEFENDANT: All right.

18 THE COURT: -- in addition to the music.

19 MR. SMITH: And also keep -- it will help keep him
20 busy, Judge.

21 THE COURT: What's that?

22 MR. SMITH: It will also help keep him busy.

23 THE COURT: It will help keep you busy. Exactly
24 right.

25 You know, when I was a kid, my teachers told me idle

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1 hands are the devil's workshop and, you know, when you sit
2 around with nothing to do, you get yourself potentially in
3 trouble. So, now's the time, get your act together.

4 THE DEFENDANT: I promise to stay out the way. I --
5 I've been held 5 months and did a lot of thinking in my mind,
6 body, and soul. I just had a baby girl a month ago today and
7 she really everything. They -- my girlfriend and my baby is
8 really everything I got. I know I done did things in the past,
9 but I left Chicago trying to get my life together. I did not
10 have that gun to hurt nobody. Like, I'm really targeted in
11 life and be really people like. . . always funny stuff going
12 on, so, I just -- you know, I made the wrong decisions, but I'm
13 going to do better.

14 THE COURT: All right. I'm going to give you the
15 chance.

16 THE DEFENDANT: Thank you.

17 THE COURT: And if you think you're a target, it's
18 time to change the environment.

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Get yourself a new set of friends, get
21 yourself a new place to live, whatever you got to do, get out
22 of the neighborhood, do whatever you got to do to set yourself
23 on a path to success.

24 THE DEFENDANT: Yes, sir.

25 THE COURT: And I agree with Mr. Smith, you know, not

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1 having contact with felons is important. It may be difficult
2 in your industry, but it's important.

3 THE DEFENDANT: Yes, sir.

4 THE COURT: What I suggest to you is when you figure
5 out who you've got to work with or you got an opportunity to
6 work with somebody, pick up the phone, call Pretrial and ask
7 them, can I hang out with this person, can I work with this
8 person, they may be a felon. If there's good, legitimate
9 reasons you can justify it, they may say, okay, thanks for
10 telling us, now we know, we're not going to run you in to
11 Judge Gordon, yes, you can or no, you can't. You know, if
12 they've got real concerns that this is going to be something
13 that's going to be bad for you, they may say no, you got to
14 find a different alternative. But if they say, you know what,
15 it's legitimate, we think, they may say okay and we're not
16 going to run you in on it. Ask for permission, not for
17 forgiveness.

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Okay. If there's any question whether you
20 can do something or not, pick up the phone and ask for
21 permission.

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Because I don't want you coming in here
24 trying to say, Judge Gordon, I thought I could do this, I
25 thought I could do that. The answer is going to be no, you

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1 should have asked.

2 THE DEFENDANT: Okay.

3 THE COURT: Are we all on the same page?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: All right. I don't want to see you
6 violate; I want to see you get your stuff together.

7 THE DEFENDANT: Yes, sir.

8 THE COURT: But you got to make a strong effort to do
9 that, and it's up to you to police your environment.

10 If somebody gets in your car with drugs or weapons,
11 you get them out of that car immediately.

12 THE DEFENDANT: Yes, sir.

13 THE COURT: If you get into a car and there's drugs or
14 weapons, get yourself out of there. Call an Uber and take an
15 Uber home or do whatever you got to do, but get out of there --

16 THE DEFENDANT: Yes, sir.

17 THE COURT: -- because you get pulled over, you get
18 searched and they find drugs or weapons on you, you're
19 explaining and when you're explaining, you're losing. Don't
20 get yourself in that situation.

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Somebody brings stuff to your house or
23 apartment, make them get rid of it. All right?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: I'm going to give you an opportunity.

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1 THE DEFENDANT: Thank you.

2 MR. SMITH: Can you remind him that under federal law
3 that also includes marijuana?

4 THE COURT: Yes. Good point. Because I just had that
5 in my last hearing. I had somebody come in on a violation
6 claiming that they had marijuana butter somebody inadvertently
7 put in their food. That's a federal violation. State law
8 allows recreational marijuana, feds don't and you're in the
9 federal system.

10 THE DEFENDANT: I never -- I don't smoke weed anyway.

11 THE COURT: No smoking weed, and if somebody's cooking
12 a meal for you, ask them if they put marijuana in your food --
13 in the butter.

14 MS. LAZO: Police the kitchen.

15 THE COURT: Police the kitchen. You know, I just had
16 that half an hour ago. That's why I don't want to see you do
17 it. Ask. Make sure. Because there will be testing and you're
18 going to test positive if somebody puts it in there and you're
19 explaining and it's a bad situation.

20 THE DEFENDANT: Yes, sir.

21 THE COURT: I'm reading you the riot act right now
22 because I see this come back to me -- not on you but on
23 others -- and I don't want to have this same conversation that
24 I had half an hour ago with you.

25 All right. So, let's talk about conditions. We're

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1 going to have the girlfriend as third-party custodian.

2 PRETRIAL OFFICER: Your Honor. . .

3 THE COURT: Yes. If you got some recommendations, I'd
4 love them, Ms. Bowen.

5 PRETRIAL OFFICER: Your Honor, I'd like to comment on
6 that. If you look at our original report, on Page 2,
7 Officer Barlow had spoken to the girlfriend and had determined,
8 based on her conversation with the defendant's girlfriend, that
9 she would not be a suitable third-party custodian based on her
10 criminal record.

11 THE COURT: Ah. Gotcha. Okay.

12 And for some reason I don't have the original that was
13 given to -- I've got yours. I didn't get the original report
14 from the magistrate judge.

15 PRETRIAL OFFICER: Oh, I'm sorry. I thought I sent
16 it.

17 THE COURT: You probably did but I forgot to print it
18 out. That's fine.

19 Let's go about it this way. What conditions would you
20 recommend? No contact with felons is good.

21 The employment, I want to see constructive efforts of
22 getting employment.

23 PRETRIAL OFFICER: So, if you'd like, I can just go
24 through them.

25 THE COURT: Please. Thank you.

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1 PRETRIAL OFFICER: Okay. We'd recommend that the
2 defendant shall report to U.S. Pretrial Services supervision.

3 The defendant shall satisfy all outstanding warrants
4 within 60 days and provide verification to Pretrial Services or
5 the supervising officer.

6 The defendant shall abide by the following
7 restrictions on personal association, place of abode or travel:

8 That travel is restricted to Clark County, Nevada.

9 The defendant shall maintain his residence at 828 East
10 Flamingo Road, Number 118, in Las Vegas, Nevada, and not move
11 prior to obtaining permission from the Court or his Pretrial
12 Services officer.

13 The defendant shall maintain or actively seek lawful
14 and verifiable employment and notify Pretrial Services or the
15 supervising officer prior to any change.

16 The defendant shall refrain from possess- --
17 possessing a firearm, destructive device, or other dangerous
18 weapon.

19 The defendant shall submit to any testing required by
20 Pretrial Services or the supervising officer to determine
21 whether the defendant is using a prohibited substance. The
22 defendant shall pay all or part of the cost of the testing
23 program based on his ability to pay.

24 The defendant shall refrain from the use or unlawful
25 possession of a narcotic drug or other controlled substance

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1 unless prescribed by a licensed medical practitioner.

2 The defendant shall not be in the presence of anyone
3 using or possessing a narcotic drug or controlled substance.

4 The defendant shall participate in a location
5 monitoring program, home detention, where the defendant is
6 restricted to his residence at all times, except for
7 employment, education, religious services, medical, substance
8 abuse or mental health treatment, attorney visits, court
9 appearances, court-ordered obligations or other activities
10 pre-approved by Pretrial Services.

11 The defendant shall submit to the type of location
12 G- -- monitoring that would be GPS monitoring, global
13 positioning satellite, and the defendant shall not tamper with,
14 damage, or remove the monitoring device and shall charge the
15 said equipment according to instructions provided by his
16 Pretrial Services officer. And the defendant shall pay all or
17 part of the cost based on his ability to pay of the location
18 monitoring program.

19 And then I believe the last condition the Court wanted
20 was him not to have association with felons. I don't know how
21 we want that to read.

22 Do you have a good. . .

23 THE COURT: Yeah.

24 MR. SMITH: I think it could -- it can just say the
25 defendant shall not associate with any known felons.

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1 PRETRIAL OFFICER: Okay.

2 THE COURT: Correct.

3 PRETRIAL OFFICER: Okay.

4 MR. SMITH: Something along those lines.

5 THE COURT: Without -- without permission of the
6 Pretrial Services Office.

7 MR. SMITH: Without permission of Pretrial Services.

8 PRETRIAL OFFICER: Okay.

9 THE COURT: That way he can clear it with you and if
10 you say it's cool, it's great. If you say no, he doesn't.

11 PRETRIAL OFFICER: Okay. I appreciate that.

12 And I just want to make the Court aware, and I know
13 his defense counsel has, that he will be taken into custody on
14 some warrants. So there's going to be a period of time where
15 he's not going to be monitored by location monitoring between
16 his release from that facility and us coordinating with him to
17 come to our office for the location monitoring hookup.

18 THE COURT: So I should impose a restriction that he
19 needs to contact you as soon as he's released from --

20 PRETRIAL OFFICER: Immediately.

21 MR. SMITH: Within 24 hours is what I was going to
22 suggest.

23 THE COURT: Yeah.

24 PRETRIAL OFFICER: Yes.

25 MS. LAZO: Judge, if I can ask Ms. Bowen, the location

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1 monitoring, is that the radio frequency or GPS? I missed it.

2 PRETRIAL OFFICER: That's the GPS.

3 MS. LAZO: GPS.

4 THE COURT: In fact, what I'll do on the location
5 monitoring is I'm just going to give Pretrial Services whatever
6 discretion they feel like they need. So if you think GPS, if
7 you decide radio frequency's fine, I'll let you make that
8 determination. I'll give Pretrial Services the discretion to
9 do whichever one they deem most appropriate.

10 MS. LAZO: And, Judge, would he also be permitted to
11 not be under home confinement, obviously, for purposes of
12 attorney visits, medical visits, religious and work?

13 THE COURT: Yeah. That's what she -- let me
14 double-check.

15 MR. SMITH: That's what she said, Judge.

16 MS. LAZO: Oh, I may have missed it. I'm sorry.

17 THE COURT: Yeah. The -- at all times except for
18 employment, education, religious services, medical, substance
19 abuse or mental health treatment, attorney visits, court
20 appearances, court-ordered obligations, or other activities
21 pre-approved by Pretrial. So we do have employment. We do
22 have attorney visits. We do have church and things.

23 MS. LAZO: I wasn't listening, obviously.

24 THE COURT: That's fine.

25 MS. LAZO: And then, Judge, would you -- it seems that

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1 you're going to impose that condition. Would you consider
2 relaxing that condition if he shows compliance let's say after
3 30, 45 days?

4 THE COURT: I will allow the defense to file a motion
5 to terminate that condition.

6 MS. LAZO: Okay.

7 THE COURT: And we'll take a look at it at that point.
8 If you can demonstrate good compliance and Pretrial says yeah,
9 we think he's cool, we don't need to do this any further, I'll
10 give that consideration. Certainly, the government will have
11 an opportunity to respond to that.

12 MR. SMITH: Thank you, Your Honor.

13 MS. LAMBROSE: Thank you, Your Honor.

14 THE COURT: Yeah. But, yeah, I would wait at least
15 45 days before filing that motion.

16 All right. And the condition we just mentioned, just
17 to be clear, is if he's taken into state custody upon release
18 from here, that the defendant shall notify and report to
19 Pretrial here within 24 hours of release from state custody.
20 So that way --

21 MS. LAMBROSE: Understood, Your Honor. Yes.

22 THE COURT: So that way when you get things cleared up
23 over there, let them know now you're out and that way there's
24 not -- they're not worried you've absconded at that point.

25 MS. LAZO: He's very good at staying in contact with

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1 us, Judge.

2 THE COURT: I'm glad. All right.

3 I will impose those conditions. I find by clear and
4 convincing evidence that the defendant's appearance and the
5 safety of the community can be ensured by releasing on a PR
6 bond with those conditions. So we'll prepare the PR bond, have
7 that executed today. We've got the hearing -- sentencing date
8 already set.

9 Is there anything else I can address for the parties
10 today?

11 MR. SMITH: Judge, just procedurally, I'm going to ask
12 that you order the defendant personally to show up for his
13 sentencing because, candidly, I think that that's an element if
14 he fails to appear and if the government decides that it wants
15 to pursue criminal charges. So I'm asking that in open court
16 you just inform him personally that his sentencing date is
17 November 15th at 10:30 and that he has to appear per your
18 order.

19 THE COURT: No. I think that's a fair comment.

20 You do need to show up for sentencing and if you
21 don't, that could be a violation of -- that will be a --
22 considered a violation of your release conditions.

23 Do you understand?

24 THE DEFENDANT: I'll be here.

25 THE COURT: I presume so. All right.

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1 MS. LAMBROSE: That was assumed on our side as well.

2 THE COURT: Just to be clear.

3 MR. SMITH: Thanks, Judge.

4 THE COURT: All right. Anything else from the defense
5 we need to address today?

6 MS. LAMBROSE: Not from the defense. Thank you,
7 Your Honor.

8 THE COURT: Nothing else from --

9 MS. LAZO: No, sir. Thank you, Judge, for
10 accommodating it earlier, too.

11 THE COURT: Hang on one second.

12 (Off-record discussion.)

13 THE COURT: Oh, yeah. We're going to -- I'll have you
14 interlineate the Plea Agreement, time. I'll have that brought
15 out to you after we've recessed so we'll have that on the
16 record.

17 Officer Bowen, anything else you want Pretrial to
18 address this morning?

19 PRETRIAL OFFICER: No, Your Honor.

20 THE COURT: Last chance. Anybody? We good?

21 MR. SMITH: I think we're good, Judge.

22 THE COURT: All right. We're in --

23 MS. LAMBROSE: Thank you so much, Your Honor.

24 THE COURT: We're in recess on this matter. Thank you
25 all.

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1 MR. SMITH: Thank you.

2 THE COURT: All right. I don't want to see you before
3 sentencing.

4 (Proceedings adjourned at 10:27 a.m.)

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7 COURT REPORTER'S CERTIFICATE

8

9 I, Heather K. Newman, Official Court Reporter, United
10 States District Court, District of Nevada, Las Vegas, Nevada,
11 do hereby certify that pursuant to Section 753, Title 28,
12 United States Code, the foregoing is a true, complete, and
13 correct transcript of the proceedings had in connection with
14 the above-entitled matter.

15

16 DATED: 12-21-2018 /s/ Heather K. Newman
17 Heather K. Newman, CCR #774
OFFICIAL FEDERAL REPORTER

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